



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 11 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hugh Ashlock
Registered Agent for Dimond Center Holdings, LLC
800 East Dimond Boulevard, Suite 3-500
Anchorage, Alaska 99515

Re: Finding of Violation
Dimond Center Holdings, LLC
Anchorage, Alaska

Dear Mr. Ashlock:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Dimond Center Holdings, LLC (you). We find that you have violated the Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.*, specifically the regulations for the Protection of Stratospheric Ozone located at 40 C.F.R. Part 82, Subpart A. EPA promulgated these regulations as required by Section 605 of the CAA, 42 U.S.C. § 7671d.

We have several enforcement options under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3). These options include issuing an administrative compliance order, issuing an administrative penalty order and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us, either in person or by telephone, about the violations alleged in the FOV. The conference will give you the opportunity to present information on the specific findings of violation, the efforts you have taken to comply, and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Charles Hall. You may contact him by telephone at (312) 353-3443 or by e-mail at hall.charles@epa.gov. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,



George T. Czerniak
Director
Air and Radiation Division

Enclosure: SBREFA fact sheet

cc: Charlie Garlow, U.S. EPA, Office of Enforcement & Compliance Assurance
Edward J. Kowalski, U.S. EPA Region 10

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	FINDING OF VIOLATION
)	
Dimond Center Holdings, LLC)	EPA-5-16-COE-01
Anchorage, Alaska)	
Proceedings Pursuant to the Clean Air Act,)	
42 U.S.C. §§ 7401 et seq.)	

FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) finds that Dimond Center Holdings, LLC (Dimond) is violating the Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.* Specifically, Dimond failed to comply with 40 C.F.R. Part 82, Subpart A, as follows:

Statutory and Regulatory Authority

1. Pursuant to Section 605 of the CAA, 42 U.S.C. § 7671d, EPA promulgated the Chlorofluorocarbon Production and Consumption Controls at 40 C.F.R. Part 82, Subpart A at 40 C.F.R. §§ 82.1 through 82.24.
2. 40 C.F.R. § 82.1(b) states that 40 C.F.R. Part 82, Subpart A, applies to any person that imports a controlled substance.
3. 40 C.F.R. § 82.3 defines “controlled substance” as, any substance listed in 40 C.F.R. Part 82, Subpart A, appendix A or appendix B, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Controlled substances are divided into two classes, Class I and Class II.
4. 40 C.F.R. § 82.3 refers to “Class II” as controlled substances listed in 40 C.F.R. Part 82, Subpart A, appendix B to this subpart.
5. 40 C.F.R. § 82.3 defines “consumption allowance” as the privileges granted by 40 C.F.R. Part 82 to produce and import controlled substances. The definition also states that “a person's consumption allowances for class II controlled substances are the total of the allowances obtained under 40 C.F.R. §§ 82.19 and 82.20, as may be modified under 40 C.F.R. § 82.23.”
6. 40 C.F.R. § 82.3 states, in part, that “import” means “to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.”

7. 40 C.F.R. § 82.3 defines "importer" as, "any person who imports a controlled substance or a controlled product into the United States." "Importer" includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf, and can include, as appropriate, the consignee, importer of record, actual owner or transferee.
8. 40 C.F.R. § 82.3 defines "person" as "any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof."
9. Appendix B of 40 C.F.R. Part 82, Subpart A, includes the compound monochlorodifluoromethane (HCFC-22). The compound is often referred to by the common name R-22.
10. 40 C.F.R. § 82.15(b)(1) states that no person may import class II controlled substances for which EPA has apportioned baseline production and consumption allowances, in excess of the quantity of unexpended consumption allowances held by the importer for that control period.
11. 40 C.F.R. § 82.19 lists persons that are apportioned baseline consumption allowances for class II controlled substances. This regulation does not apportion a baseline C consumption allowance for HCFC-22 to Dimond.
12. Pursuant to Section 608(a) of the CAA, 42 U.S.C. § 7671g(a), EPA promulgated the Chlorofluorocarbon Recycling and Emissions Reduction (CFC RER) rules at 40 C.F.R. Part 82, Subpart F, at 40 C.F.R. §§ 82.150 through 82.169.
13. The CFC RER rules apply to, among others, any person servicing, maintaining, repairing, or owning appliances, as those terms are defined at 40 C.F.R. § 82.152.
14. 40 C.F.R. § 82.152 defines "industrial process refrigeration" as complex customized appliances used in the chemical, pharmaceutical, petrochemical and manufacturing industries. These appliances are directly linked to the industrial process. This sector also includes ice rinks.
15. Pursuant to 40 C.F.R. § 82.156(i)(2), the owner or operator of industrial process refrigeration equipment normally containing more than 50 pounds of refrigerant must repair leaks if the appliance is leaking at a rate such that the loss of refrigerant will exceed 35 percent of the total charge during a 12-month period. Repairs must bring annual leak rates below 35 percent during a 12-month period.
16. Pursuant to 40 C.F.R. § 82.156(i)(3), the owner or operator of leaking industrial process refrigeration equipment must conduct an initial verification test at the conclusion of the repairs.

17. Pursuant to 40 C.F.R. § 82.156(i)(3), the owner or operator of leaking industrial process refrigeration equipment must conduct a follow-up verification test within 30 days of the initial verification test.
18. Pursuant to 40 C.F.R. § 82.156(i)(3)(ii), the owner or operator of industrial process refrigeration equipment must retrofit or retire the equipment within 1 year if the follow-up verification test indicates that the repairs to have not been successful.
19. Pursuant to 40 C.F.R. § 82.156(i)(3)(iii), the owner or operator of leaking industrial process refrigeration equipment that fails a follow-up verification test must notify EPA within 30 days of the failed follow-up verification test.
20. Pursuant to 40 C.F.R. § 82.156(i)(6), the owner or operator of leaking industrial process refrigeration equipment must develop a 1-year retrofit and retirement plan within 30 days of a failed follow-up verification test.
21. Pursuant to 40 C.F.R. § 82.156(i)(9), the owner or operator of industrial process refrigeration equipment must repair leaks pursuant to 40 C.F.R. § 82.156(i)(2) within 30 days after discovery of the leak.
22. Pursuant to 40 C.F.R. § 82.166(k), the owner or operator of appliances normally containing 50 or more pounds of refrigerant must keep servicing records documenting the date and type of service, as well as the quantity of refrigerant added. The owner/operator must keep records of refrigerant purchased and added to such appliances in cases where owners add their own refrigerant. Such records should indicate the date(s) when refrigerant is added.
23. Pursuant to 40 C.F.R. § 82.166(n)(3), the owner or operator of industrial process refrigeration equipment must maintain records of the dates, types, and results of all initial and follow-up verification tests performed under 40 C.F.R. § 82.156(i)(3).

Findings of Fact

24. Dimond is a "person" as defined at 40 C.F.R. § 82.3.
25. Dimond owns and operates a shopping mall at 800 East Dimond Boulevard, Anchorage, Alaska (the Facility).
26. Dimond owns and operates industrial refrigeration equipment and comfort cooling appliances at the Facility.
27. On or about September 16, 2012, Shining Star Technology Development Limited, of Guangzhou, China, issued an invoice for the sale and shipment of 100 50-pound cylinders of R-22 to Dimond, 800 E Dimond Boulevard, Suite 3-500, Anchorage, Alaska. The 100 cylinders contained a total of 2268 kilograms of R-22.

28. On or about October 17, 2012, United States Customs and Border Protection detained the shipment of R-22 at the port in Seattle, Washington.
29. On or about October 17, 2012, U.S. Customs and Border Protection seized the shipment of R-22.
30. R-22 is a controlled substance, as defined by 40 C.F.R. Part 82, Subpart A, appendix B.
31. Dimond's attempt to import, and its importation of, R-22 into Seattle, Washington, a place subject to the jurisdiction of the United States, makes it an importer of a controlled substance. 40 C.F.R. § 82.3.
32. Dimond has not been apportioned any baseline consumption allowances under 40 C.F.R. § 82.19.
33. Dimond owns and operates industrial process refrigeration equipment called the Ice Chalet compressor skid. It normally contains more than 50 pounds of R-22.
34. The Ice Chalet compressor skid experienced leaks during the time period between May 6 and July 14, 2011, which resulted in an annual leak rate greater than 35 percent.
35. Repairs performed, if any, on the Ice Chalet compressor skid between May 6 and July 14, 2011, did not reduce the annual leak rate below 35 percent.
36. Initial verification tests, if any, performed within 30 days following the discovery of each excessive leak rate failed to verify that the leak rate of the Ice Chalet compressor skid was below 35 percent.
37. Follow-up verification tests, if any, performed within 30 days following the initial verification tests, if any, failed to verify that the repairs performed in conjunction with the tests had brought the leak rate of the Ice Chalet compressor skid below 35 percent.
38. Dimond did not develop retrofit or retirement plans for the Ice Chalet compressor skid when repairs performed, if any, did not reduce the leak rate below 35 percent.
39. Dimond did not retrofit or retire the Ice Chalet compressor skid when repairs performed, if any, did not reduce the leak rate below 35 percent.
40. Dimond did not notify U.S. EPA after failed follow-up verification tests performed, if any, showed that repairs had failed to bring the leak rates of the Ice Chalet compressor skid to below 35 percent.
41. Dimond owns and operates four comfort cooling appliances designated as McQuay 6th Floor East, McQuay 6th Floor North, McQuay 6th Floor South, and McQuay 6th Floor

West (collectively, the McQuay appliances). Each of the McQuay appliances normally contains more than 50 pounds of refrigerant.

42. On July 6, 2012, Dimond added refrigerant to each of the four comfort cooling appliances, but did not record the quantity of refrigerant added to any of the appliances.

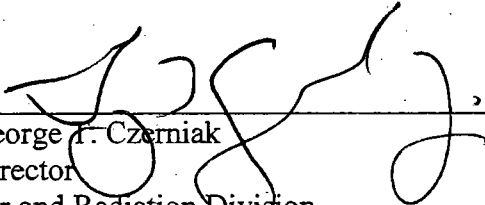
Finding of Violation

43. On or about October 17, 2012, Dimond violated 40 C.F.R. §82.15(b)(1) by attempting to import 2,268 kilograms of R-22 into Seattle, Washington.
44. Dimond failed to repair leaks on the Ice Chalet compressor skid within 30 days after discovery in violation of 40 C.F.R. §§ 82.156(i)(2) and 82.156(i)(9).
45. Dimond failed to perform initial verification tests to verify that the repairs performed, if any, on the Ice Chalet compressor skid brought the leak rate of each piece of equipment below 35 percent in violation of 40 C.F.R. § 82.156(i)(3).
46. Dimond failed to perform follow-up verification tests to verify that the repairs performed, if any, on the Ice Chalet compressor skid brought the leak rate of each piece of equipment below 35 percent in violation of 40 C.F.R. § 82.156(i)(3).
47. Dimond failed to retrofit or retire the Ice Chalet compressor skid when repairs performed were unable to bring the leak rate below 35 percent in violation of 40 C.F.R. § 82.156(i)(3)(ii).
48. Dimond failed to notify EPA after repairs on the Ice Chalet compressor skid failed to bring the leak rates below 35 percent within 30 days of the failed follow-up verification test in violation of 40 C.F.R. § 82.156(i)(3)(iii).
49. Dimond failed to develop retrofit or retirement plans for the Ice Chalet compressor skid when repairs performed were unable to bring the leak rate below 35 percent in violation of 40 C.F.R. § 82.156(i)(6).
50. Dimond failed to keep servicing records for the McQuay appliances documenting the date and type of service, as well as the quantity of refrigerant added in violation of 40 C.F.R. § 82.166(k).

51. Dimond failed to maintain records of the dates, types, and results of all initial and follow-up verification tests for the Ice Chalet compressor skid performed under 40 C.F.R. § 82.156(i)(3) in violation of 40 C.F.R. § 82.166(n)(3).

Date

12/11/15


George F. Czerniak
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Kathy Jones, certify that I sent a Finding of Violation, No. EPA-5-16-COE-1, by Certified Mail, Return Receipt Requested, to:

Hugh Ashlock
Registered Agent for Dimond Center Holdings, LLC
800 East Dimond Boulevard, Suite 3-500
Anchorage, Alaska 99515

I also certify that I sent copies of the Finding of Violation by first class mail to:

Edward Kowalski
Director
Office of Compliance and Enforcement
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Code: OCE-184
Seattle, WA 98101

on the 16th day of December 2015

Kathy Jones

Kathy Jones
Program Technician
AECAB, PAS

Certified Mail Receipt Number: 704 2670 0001 9581 4861